

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
REGULAR MEETING
JUNE 27, 2005**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, June 27, 2005 in the City Council Chamber of the Melvin Municipal Office Building, Greensboro, North Carolina, commencing at 2:06 p.m. The following members were present: Chair Hugh Holston, Sandra Anderson, Ann Buffington, John Cross, Rick Pinto. Bill Ruska, Zoning Administrator and Blair Carr, Esq. from the City Attorney's Office, were also present.

Chair Holston called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board concludes its hearings and the method for appealing any ruling made by the Board. Chair Holston also advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Cross pointed out a correction to the May minutes:

Mr. Cross moved approval of the minutes as corrected, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion. (Ayes: Anderson, Buffington, Cross, Holston, Pinto. Nays: None.)

Mr. Ruska was sworn in.

NEW BUSINESS

VARIANCE

Counsel Carr pointed out that there is a jurisdictional question the Board needs to answer before hearing testimony on the following two cases. The Board is being asked to render a decision based on an interpretation made by an officer of the City, i.e. Building Inspector, and the decision was the valuation of the homes and structures on the two lots. There were Orders entered in August of 2004 with regard to the valuation of these properties by the Greensboro Housing Commission. The Board of Adjustment rules, specifically 30-9-6.9, say that "appeals shall be made within the time prescribed by the Board of Adjustment." The time prescribed by the Board, in the internal rules, is "such appeal shall be filed with the Department of Planning within fifteen (15) days from the date such decision or Order was issued." The first question that must be answered is, are these appeals timely. The cases can be heard together but a separate vote must be taken for each item.

Steve Crihfield, attorney representing the applicant, 110 Commerce Place, was sworn in and stated that these properties are part of several parcels in the Glenwood area that the applicant has been working on and became involved in a demolition process, which was the result of a Stop Work Order which occurred in February of 2004. The applicant has appeared before the Housing Commission on several occasions together with several staff people to try and get these houses back on track for renovation. The Demolition Order was modified by placement of Agreements in Lieu of Demolition to allow them to move forward in the process of renovating these houses. The main question was whether the exterior of the houses could be made eye-appealing so that the neighborhood would not complain about their appearance and that was accomplished. It was determined that the Board of Adjustment would have to make a determination concerning variations on the properties. This neighborhood was in existence before the Building Code was adopted so some of the houses were built in a way that does not conform. Therefore, the applicant feels that he is not getting anywhere in trying to get everything done in a proper manner to be allowed to finish the houses.

In response to answers given by Mr. Carihfield, Mr. Cross stated that there was no question of the fact that the house in question is 5 feet into the setback and the applicant is trying to obtain a variance to rectify that problem. There is also no question that the houses are more than 50% damaged, based on the tax values listed for the properties. The question now is whether the Board should grant them the variance based on whatever standards the Board can apply to grant them a variance to circumvent that problem.

In response to several questions, Mr. Carihfield stated that the damage to the properties was done as part of the renovation process and not caused by wind or rain or tornadoes. He also feels that the tax value is either erroneous or is based on, not damage but an appraisal that was done back in the midst of renovation and is not under the particular section that was previously quoted by Counsel Carr. He feels that the Board has the authority to say they want to see these houses renovated and will make a decision on the merits and not be barred by some technical rule that there is no just reason to apply.

Counsel Carr stated that in clarifying the City's position, these houses can still be repaired but if they have failed to continue as nonconforming structures, they must meet current standards which would be consistent with the City's position that they would love to have rebuilt homes in that area. The key is whether they can be rebuilt based on old standards or new standards.

Mr. Carihfield stated that he feels that the Board should make a decision in regard to the footprint issue and clearly should agree to the variance on the value of the properties because it is not a damage situation. If they are allowed to proceed and finish the houses it would make them available for the moderate income housing purposes.

Charles McKinney, 6104 Gold Dust Trail, was sworn in and stated that he has been working with the applicant in an effort to complete the process of renovating these houses. He has met with several of City staff in this effort. The problem with going through some of the procedures has been confusing because of the amount of things that are required and getting the information to the right places and getting applications where they should be.

Mr. Carihfield read into the record a portion of the agreement, "The owner must apply for and obtain a variance before a building permit may issue because the repair costs of the property will exceed 50% of the properties' ad valorem tax value and the location of the house currently located upon the property encroaches upon zoning setbacks for a fifty-foot wide lot."

In response to questions by Mr. Cross concerning the possibility of waiving the internal rule concerning the 15 day appeal, Counsel Carr stated that she would warn the Board about any precedential value that may be set for future cases that come before the Board. What the Board should decide is whether this is or is not a nonconforming structure. Nonconforming structure is based, in part, on information and decisions that were made by the Building Inspector and that Inspector's opinion was not only made in excess of 15 days ago, but it appears it was ratified by the applicant. So what other parts of the definition of nonconforming are left to be challenged.

After some discussion by the Board members it was determined that they wished to hear the case. Counsel Carr pointed out that because the issues are very similar with regard to the first two cases, it is her opinion that one evidentiary hearing can be held with regard to both properties but the Board must take two separate votes.

(A) BOA-05-22 1013 UNION STREET BULENT BEDIZ REQUESTS A VARIANCE FROM A NONCONFORMING STRUCTURE REQUIREMENT THAT STATES: IN THE EVENT OF FIRE OR OTHER CAUSES TO AN EXTENT EXCEEDING FIFTY (50) PERCENT OF ITS TAX VALUE PRIOR TO SUCH DAMAGE, AS ESTABLISHED BY THE COUNTY TAX DEPARTMENT, RECONSTRUCTION OF A NONCONFORMING STRUCTURE SHALL BE PERMITTED ONLY IN COMPLIANCE WITH THE DIMENSIONAL PROVISIONS OF THIS ORDINANCE. VIOLATION: THE EXISTING SINGLE FAMILY DWELLING, WHICH IS NONCONFORMING IN RELATION TO DIMENSIONAL SETBACKS, HAS DAMAGE THAT EXCEEDS MORE THAN FIFTY PERCENT OF ITS TAX VALUE. SECTION 30-4-11.3(B)(2), PRESENT ZONING-RM-12, BS-7, CROSS STREET-LEXINGTON AVENUE. (DENIED)

Mr. Ruska stated that the lot is located on the south side of Union Street east of Lexington Avenue on zoning map block sheet 4 and is zoned RM-12. The lot is rectangular shaped. It is 50 feet wide by 78 feet deep and contains 3,900 square feet of area. The lot contains a single family dwelling, which has damage that exceeds more than fifty percent of the tax value of the structure. The existing dwelling encroaches 15.9 feet into the 25 foot front setback requirement; thus, the dwelling is nonconforming in relation to current setbacks. Section 30-4-11.3(B)(2) Nonconforming structures states: "In the event of damage by fire or other causes to an extent exceeding fifty (50) percent of its tax value prior to such damage, as established by the County Tax Department, reconstruction of a nonconforming structure shall be permitted only in compliance with the dimensional provisions of this Ordinance." A copy of this requirement is attached. The applicant is requesting a variance from the nonconforming structure requirement as stated above. The existing single family dwelling, which is nonconforming in relation to dimensional setbacks, has damage that exceeds more than fifty percent of its tax value. Building Inspection and Tax records indicate the structure contains approximately 1,127 square feet. The current tax value is \$31,100. The Building Inspector, Julius Register, has inspected the site and has made an estimate for reconstruction value. The estimate is based on a minimum of \$50.00 per square foot for new construction, and adjusted by the percentage of damage. This property has been estimated to have 65 percent damage. Based on 732 square feet (65 percent of 1,127 square feet) at a minimum of \$50.00 per square foot, the estimated repair cost would be \$36,628.00. Attached is a copy of these estimates from the Building Inspector.

BACKGROUND INFORMATION

This property has been an agenda item in relation to demolition process hearings from August 10, 2004 through May 10, 2005 at the Greensboro Minimum Housing Standards Commission. At the March 8, 2005 meeting, the Housing Commission's ruling allowed the property owner an additional 90 days to secure a bond and complete exterior renovations.

At the April 27, 2005 meeting, the Housing Commission's determination recognized that a Board of Adjustment ruling on this property would be forthcoming; and therefore, made a determination to rescind the demolition order, pending the forthcoming ruling. A chronological time line of these meetings is attached.

Dan Curry, Deputy Director and Development Manager for the Department of Housing and Community Development has stated that Mr. Bediz did request funding for this property; however, the Housing and CD Department would only actively fund two properties for Mr. Bediz. Mr. Bediz chose two other properties; thus, this property has no funding commitments from the City of Greensboro. Attached is a copy of an email that confirms this data.

(B) BOA-05-23: 810 LEXINGTON AVENUE BULENT BEDIZ REQUESTS A VARIANCE FROM A NONCONFORMING STRUCTURE REQUIREMENT THAT STATES: IN THE EVENT OF FIRE OR OTHER CAUSES TO AN EXTENT EXCEEDING FIFTY (50) PERCENT OF ITS TAX VALUE PRIOR TO SUCH DAMAGE, AS ESTABLISHED BY THE COUNTY TAX DEPARTMENT, RECONSTRUCTION OF A NONCONFORMING STRUCTURE SHALL BE PERMITTED ONLY IN COMPLIANCE WITH THE DIMENSIONAL PROVISIONS OF THIS ORDINANCE. VIOLATION: THE EXISTING SINGLE FAMILY DWELLING, WHICH IS NONCONFORMING IN RELATION TO DIMENSIONAL SETBACKS, HAS DAMAGE WHICH EXCEEDS MORE THAN FIFTY PERCENT OF ITS TAX VALUE. SECTION 30-4-11.3(B)(2), PRESENT ZONING-RM-12, BS-7, CROSS STREET-UNION STREET. (DENIED)

Mr. Ruska stated that Bulent Bediz is the owner of a parcel located at 810 Lexington Avenue. This case was continued from the February 28, and March 28, 2005 meetings. The lot is located on the west side of Lexington Avenue east of Glenwood Avenue on zoning map block sheet 4 and is zoned RM-12. The lot contains a single family dwelling. The applicant is proposing to add a small addition to the side, which will encroach 3.5 feet into a 5-foot side setback requirement. The applicant did not furnish a survey. The zoning office cannot determine the accuracy of the drawing that was submitted. The lot is rectangular shaped and contains approximately 7,800 square feet. According to the applicant's drawing, a portion of the existing house already encroaches 3.5 feet into the side setback. The applicant has shown the addition to retain the same encroachment as the existing house. The drawing has a deck shown on it, which also encroaches 3.5 feet into the side setback. This deck does not exist and the applicant does not mention a variance request in his application for the proposed deck encroachment. The property was the subject of a demolition hearing at the March 8, 2005 Greensboro Minimum Housing Standards Commission meeting. A portion of the Commission's ruling allowed the property owner an additional 90 days to complete the exterior renovation, along with securing a bond to complete the exterior renovations at this location as well as other locations owned by Mr. Bediz. The adjacent properties located to the north, south, and on the eastern side of Lexington Avenue are also zoned RM-12. The adjacent property located to the west is zoned GB.

Charles McKinney, 6104 Gold Dust Trail, was previously sworn and stated that some changes had been submitted for consideration. In regard to 1013 Union Street, with the proposed changes they will still be in line with the houses to the left and right and the rest of the street. He feels that the proposed changes will add value to the existing property.

Mr. Ruska pointed out that Julius Register and Danny Nall from the Building Inspections Department were present in case the Board members have questions for them.

Mr. Crihfield went into more detail concerning the history or how several houses were obtained and the work that has been done on them through the past years. He also pointed out that the applicant wishes to upgrade and expand the houses he is currently working on to allow more conveniences and living space for the residents.

Julius Register, Building Inspections Department Inspector, was sworn in and stated that he was not involved in these properties prior to them being gutted and he does not know the history or the condition of them before they were purchased by the applicant. In 1998 and 1999 permits began to be pulled on these two houses and the original permits were for very small scope, minor repairs. He reported that the true extent of the work needed at this time far exceeds what is listed on the permits.

Mr. Cross stated he felt that the applicant would have a difficult time proving that the variance is justified even though they are grandfathered in because of the nonconforming use element and the 50% statute should not apply at all in this case because the statute reads, "in the event of damage by fire or other causes to an extent exceeding 50% of its tax value". If the City were able to establish

that the damage to the house was more than 50% of the tax value as the result of deterioration or any other reason other than the affirmative action of the applicant in the process of repairing the house, he does not feel that is the intent of the statute. He pointed out that he wonders if it was possible to determine if more than 50% was damaged prior to the time the first permit was pulled.

Mr. Carihfield pointed out that they feel the City has waived their position regarding the 50% damage because of the Agreement in Lieu of Demolition they have signed. He also pointed out that with the help of the banking institutions and obtaining a contractor and other people that have helped the work is now progressing very briskly and very nicely. He feels that the project is coming along toward fruition in the very near future. He also clarified questions concerning the financing of the projects through the banks and the City funds.

In response to a question, Mr. Ruska stated that he was sure that there were several other houses in the neighborhood that are nonconforming and there have been a couple of variance requests in the past.

Mr. Cross pointed out that he feels that it needs to be shown whether or not, before the renovations began, the property was damaged by more than 50%, because if it was, then he feels that the applicant loses the argument. If it was not, then there is a real question here.

Counsel Carr pointed out that the Zoning Administrator has made the determination that this is a nonconforming structure and that is an interpretation and it is incumbent upon the applicant to disprove that interpretation.

After much discussion, Mr. Kee stated that in the matter of BOA-05-22 and BOA-05-23, based on the stated findings of fact, he moved that the Zoning Administrator be upheld and the variance denied based on the facts stated by the City of Greensboro, seconded by Ms. Anderson. The Board voted 2-2 on the motion, (Ayes: Anderson, Kee. Nays: Cross, Holston, Pinto.)

Mr. Cross stated that in the matter of BOA-05-22 and BOA-05-23, he moved that the Zoning Administrator's findings of fact be included in the record by reference and based on the stated findings of fact, he moved that the Zoning Enforcement officer be overruled and the variance granted based on the fact that the nonconforming use of the property is grandfathered in since the nonconforming use was in use prior to the time the ordinance was adopted and the only way for it to be no longer grandfathered in this case and continue to be nonconforming, by the definition, would be that if more than 50% per cent of its tax value had been damaged by fire or other causes pursuant to Section 30-4-11.3 of the Greensboro Code. The order issued by the City with no finding that such damage had occurred by fire or other causes and it does not address that fact and as a result, the property remains grandfathered in by its nonconforming use, seconded by Mr. Pinto. The Board voted 3-2 on the motion. (Ayes: Cross, Holston, Pinto. Nays: Anderson, Kee.)

Chair Holston stated that the motion fails.

Counsel Carr stated that simply means that the applicant must build those structures to current code standards. She pointed out that there are other two items relevant to these two properties.

Mr. Carihfield stated that since they have not met condition #4 of the Agreement in Lieu of Demolition, then the City will then demolish the house. Therefore, the question on the imprint on the ground would be moot at this point. After some discussion, he asked that the other two items relevant to these properties be withdrawn.

At this time a 5 minute break was taken.

OLD BUSINESS**VARIANCE**

- (A) **BOA-05-10: 1013 UNION STREET BULENT BEDIZ REQUESTS A VARIANCE FROM THE MINIMUM REAR SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE FEBRUARY 28, AND MARCH 28, 2005 MEETINGS. VIOLATION: A PROPOSED ADDITION WILL ENCROACH 6 FEET INTO A 20-FOOT REAR SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RM-12, BS-7, CROSS STREET-LEXINGTON AVENUE. (WITHDRAWN)**
- (B) **BOA-05-11: 810 LEXINGTON AVENUE BULENT BEDIZ REQUESTS A VARIANCE FROM THE MINIMUM SIDE SETBACK REQUIREMENT. THIS CASE WAS CONTINUED FROM THE FEBRUARY 28, AND MARCH 28, 2005 MEETINGS. VIOLATION: A PROPOSED ADDITION WILL ENCROACH 3.5 FEET INTO A 5-FOOT SIDE SETBACK. TABLE 30-4-6-1, PRESENT ZONING-RM-12, BS-7, CROSS STREET-UNION STREET. (WITHDRAWN)**

NEW BUSINESS**VARIANCE**

- (A) **BOA-05-24: 118 BATCHELOR DRIVE DAVID DORN REQUESTS A VARIANCE FROM A SIDE STREET SETBACK REQUIREMENT. VIOLATION: A PROPOSED ATTACHED CARPORT WILL ENCROACH 3 FEET INTO A 15-FOOT SIDE SETBACK FROM BATTLE ROAD. TABLE 30-4-6-1, PRESENT ZONING-RS-12, BS-78, CROSS STREET-BATTLE ROAD. (DENIED)**

Mr. Ruska stated that David Dorn is the owner of the property located at 118 Batchelor Drive. The lot is located at the northeastern intersection of Batchelor Drive and Battle Road on zoning map block sheet 78. The property is zoned RS-12. The lot contains a single family dwelling. The applicant is proposing to attach a carport addition which will encroach 3 feet into a 15-foot side street setback from Battle Road. The lot is a corner lot. The lot line adjacent to Battle Road has a severe angle. This causes the width of the lot to decrease as the depth increases. The existing driveway is located adjacent to the Battle Road right-of-way. The carport will be approximately 20 feet x 22 feet and contain approximately 440 square feet. In February 2005, the applicant applied for and was approved for a building permit for a carport. The applicant submitted a survey and showed the carport to be 15 feet from the side property line adjacent to Battle Road. When the footings were excavated the contractor realized the carport did not meet the minimum setback; thus, the owner applied for a variance. The adjacent properties and the properties located on the western side of Batchelor Drive are also zoned RS-12.

Chair Holston asked if there was anyone present wishing to speak for or against this request.

John Mallard, 6870 Heathwood Court, was sworn in and stated that he agreed with Mr. Ruska's presentation. They felt that they had the matter in hand but when they started digging the footings they found that they were encroaching about 2.6 feet into the side setback. The hardship relates to the property being a corner lot and there is nowhere else on the property that would facilitate the structure. The proposed carport would not be an intrusion to other homes in the area and there would be no health or safety issues. There is also a brick retaining wall on the property that interferes with the structure being placed in a different location on the property. They are asking for the variance to be able to complete the work on this project.

Mr. Cross moved that in BOA-05-24, 118 Batchellor Drive, that the Zoning Administrator's findings of fact be incorporated into the record by reference and based on the stated findings of fact, that the Zoning Enforcement officer be upheld and the variance denied based on the fact that the applicant has failed to demonstrate that if the applicant complies with the provisions of the ordinance, they can make no reasonable use of the property, seconded by Mr. Pinto. The Board voted 4-1 in favor of the motion. (Ayes: Anderson, Cross, Kee, Pinto. Nays: Holston.)

(B) BOA-05-25: 1612 ST. ANDREWS ROAD ROBERT V. AND CAROLE D. PERKINS REQUEST A VARIANCE FROM THE MINIMUM SIDE STREET CENTERLINE SETBACK REQUIREMENT. VIOLATION: A PROPOSED SINGLE FAMILY DWELLING WILL ENCROACH 7 FEET INTO A 40-FOOT CENTERLINE SETBACK FROM WENTWORTH DRIVE. TABLE 30-4-6-1, PRESENT ZONING-RS-9, BS-28, CROSS STREET-WENTWORTH DRIVE. (GRANTED)

Mr. Ruska stated that Robert V. Perkins, III and Carole D. Perkins are the owners of a parcel located at 1612 St. Andrews Road. The lot is located at the southeastern intersection of St. Andrews Road and Wentworth Drive on zoning map block sheet 28. The applicant is requesting a variance to construct a one-story single family dwelling that will contain approximately 2,635 square feet, plus a front porch.) It will encroach 7 feet into a 40-foot centerline setback from Wentworth Drive. The structure is required to be 15-feet from a side street property line or 40-feet from the centerline of Wentworth Drive (whichever is greater). The structure is proposed to be 15 feet from the property line and 33 feet from the centerline. The side street is Wentworth Drive. Wentworth Drive does not have a standard 50-foot right-of-way. The right-of-way for public dedication is only 35 feet. Because Wentworth Drive has a substandard right-of-way, the centerline setback is the greater setback. The lot is currently zoned RS-9. The adjacent properties are also zoned RS-9 and the properties located on the western side of St. Andrews Road are zoned RS-12.

Chair Holston asked if there was anyone present wishing to speak for or against this request.

Marc Isaacson, 101 W. Friendly Avenue, attorney representing the applicant, was sworn in and presented materials for the Board members' review. He stated that Wentworth Avenue is extremely narrow with a 35 foot right-of-way. The general look of current streets now are 50 feet. The proposed structure does meet the 15 foot setback. This is a proposed residence that is caught in the 'greater-than' requirement of the two-prong test. He pointed out that the owner is allowed to take up 35% of the property in built-upon area, however, this proposed home would take up only 24.7% of the lot. To comply with the ordinance the owners would have to move the house 7 feet back from Wentworth Drive and that would create a very narrow home. They are also trying to avoid removing some of the older large trees on the lot.

Jim Collins, 1700 N. Elm Street, was sworn in and stated that he is the architect for the property owner and they have carefully examined and measured houses in the neighborhood to look at the

heights and widths so that the new house would be compatible with the neighborhood. If changed to a smaller footprint, the house would be too tall and would not match existing houses.

Mr. Pinto moved that in BOA-05-25, 1612 St. Andrews Road, based on the stated finding of fact incorporated into the record, that the Zoning Administrator be overruled and the variance be granted because there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance and if the applicant complies with the provisions of the ordinance he can make no reasonable use of the property as there are two side setback requirements that is an either/or standard i.e., 15 feet from the street line or 40 feet from the center line of the side street. The proposed construction plan calls for it to be in compliance with the 15 foot side setback. only because Wentworth Drive is a 35 foot street as opposed to a 50 foot street. The owner and their architect have gone to a lot of trouble to make sure that this home is in compliance with the neighborhood characteristics and fits in very well and they are attempting to save some trees on the lot. The topography of the lot requires a rather narrow house and they have attempted to make that fit into the rest of the neighborhood by designing a house that takes up less than the allowable area of the lot so to preserve a lot of the green space. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it does comply with the 15 foot setback requirement on one side and more than the 5 foot setback requirement on the other side. The granting of the variance assures the public safety and welfare and does substantial justice because there has been no public safety issues raised in complying and fitting in with the neighborhood, seconded by Mr. Kee. The Board voted 4-1 in favor of the motion. (Ayes: Anderson, Holston, Kee, Pinto. Nays: Cross.)

(C) BOA-05-26: 1372 LEES CHAPEL ROAD RAYMOND PHILLIPS REQUESTS A VARIANCE FROM THE MINIMUM LOT WIDTH REQUIREMENT. VIOLATION: AN EXISTING LOT HAS A WIDTH OF 31.45 FEET AT THE SETBACK LINE WHEN 120 FEET IS REQUIRED; THEREFORE A REDUCTION OF 88.55 FEET IS REQUESTED. TABLE 30-4-6-4, PRESENT ZONING-RS-12, BS-177, CROSS STREET-WHITE CHAPEL WAY. (GRANTED)

Mr. Ruska stated that Raymond Phillips is the owner of a parcel located at 1372 Lees Chapel Road. The lot is located on the south side of Lees Chapel Road west of Yanceyville Street on zoning map block sheet 177. The lot is zoned RS-12. The applicant will be requesting a rezoning for a multifamily development, and pursuant to this rezoning request, minimum lot width requirements need to be resolved. The applicant is requesting a variance from the minimum lot width requirement for multifamily units which will require a minimum of 120 feet lot width at the setback line. The minimum setback line is measured 45 feet from the property line/right of way line. The applicant is proposing to provide a lot width of 31.45 feet; thus requesting a variance for 88.55 feet. The lot is unique in shape. The road frontage portion resembles a flag pole access which is 212 feet in length; although, the lot was not created as a flag lot under the City's Ordinance. The total tract contains 2.10 acres. The adjacent properties located to the north, west, and on the southern side of Lees Chapel Road are zoned RS-12, and the adjacent property to the east is zoned RM-8.

Chair Holston asked if there was anyone present wishing to speak for or against this request.

Gary Wolf, 812 N. Elm Street, attorney representing the applicant, was sworn in and stated that in his research on the property it was subdivided by deed in 1978 when it was located in the County. The property has two separate principle dwellings on it and those homes were built in the early 1950s and both are dilapidated and ready to be torn down. The current owner purchased the property in 2002 and continued to rent the units through the end of 2004. He intends to redevelop the property as a RM-12 townhouse development. This is a flag lot that was never a conforming flag lot, even in the County. This meets the standards for a variance.

Mr. Cross moved that in the matter of BOA-05-26, 1372 Lees Chapel Road, the Zoning Administrator's findings of fact be incorporated by reference and that the Zoning Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property because this is a flag lot that needs to be varied so that there can be some use of the property. Otherwise there is no use for the property with the possible exception of a single family residence on such a large tract which is unreasonable considering the location of the tract of land and the current area, the size and other factors. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because it is shaped like a flag lot that is not a complying flag lot. The hardship results from the application of this ordinance to the property because the ordinance requires a minimum width for a lot and this flag pole portion of the lot does not meet that width requirement even though the flag portion clearly does. The hardship is not the result of the applicant's own actions because the parcel was subdivided by deed several owners back. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the property remains large in the flag portion and a reasonable use is the proposed use by the applicant in this area of town. The granting of the variance assures the public safety and welfare and does substantial justice because there are no issues with public safety or welfare as the result of the granting of the variance and by allowing the applicant to make a reasonable use of the property, seconded by Ms. Anderson. The Board voted 5-0 in favor of the motion. (Ayes: Anderson, Cross, Holston, Kee, Pinto. Nays: None.)

(D) BOA-05-27 2918 EAST MARKET STREET WILLIAM AND DENE RICH REQUEST A VARIANCE FROM THE CENTERLINE STREET SETBACK. VIOLATION: A PROPOSED MODULAR OFFICE WILL ENCROACH 3.95 FEET INTO A MAJOR THOROUGHFARE 60-FOOT CENTERLINE SETBACK REQUIREMENT. TABLE 30-4-6-5, PRESENT ZONING-GB, BS-33, CROSS STREET-LOWDERMILK STREET. (GRANTED)

Mr. Ruska stated that William and Dene Rich are the owners of a parcel located at 2918 East Market Street. The property is located on the south side of East Market Street east of Lowdermilk Street on zoning map block sheet 33. The lot is currently zoned GB. The property contained an old building that was recently destroyed by fire. The applicant is proposing to place a modular building on the lot which will encroach 3.95 feet into a 60-foot centerline setback requirement from East Market Street. East Market Street is classified as a major thoroughfare. The setback requirement is 15 feet from the property line or 60 feet from the centerline of the street (whichever is greater). The proposed building meets and exceeds the 15-foot setback from the property line. This portion of East Market Street has a 76 foot right-of-way dedication. The property contains Sprinkle's Gas. The applicant is not changing the gas pumps, car lifts, parking areas, or other existing items on the site. Replacing the original building with a smaller building is the only change. The original building contained approximately 2,100 square feet. The new modular office will contain 286 square feet. The nonconforming setback actually improves with the location of the new structure. The prior building was located on the lot line adjacent to East Market Street and almost 50 percent of that building was shown in the railroad easement. The portion of the property that will contain the new building is 128 feet deep. The Norfolk Southern Railroad Company has a 100 foot railroad easement across this property and structures are not permitted in their easements, unless they grant a permission letter. This only left 28 feet or less of depth for a building envelope. This railroad easement is slightly angled across the property. The 60 foot setback from the centerline of East Market Street further reduced the building envelope an additional 22 feet. So that only left approximately 6 feet of building envelope, which got further reduced, due to the angle of the railroad easement. The adjacent properties located to the east, west, and on the north side of East Market Street are also zoned GB. The adjacent property located to the south is zoned RS-7.

Chair Holston asked if there was anyone present wishing to speak for or against this request.

Amanda Willis, PO Box 9593, was sworn in and stated that the hardship is that this building has been on the property for almost 100 years and was located in the same area. The proposed structure is a pre-fab modular building that will be brought in and placed at this location. The difficulty is trying to put a structure on the property that meets code and also allows a reasonable use of the property. They feel that the proposed use will be in harmony with general purpose and intent of the ordinance and this is a prior use that was already in place for many years. The proposed structure meets all the standards for the Planning Department and is awaiting approval for a building permit.

Mr. Kee moved that in the matter of BOA-05-27, 2918 E. Market Street, based on the stated findings of fact incorporated by reference, that the Zoning Administrator be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of this property because of the unique location of the property and the various easement restrictions imposed upon it both by the ordinance and the railroad. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because the use of this property was destroyed by fire and had previously been used for the same use for many years. The hardship results from the application of the ordinance to the property because of the location of the property and the easement restrictions imposed on it. The hardship is not the result of the applicant's own actions because the existing building was destroyed by fire. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the property is located in a commercial redevelopment zone which has been designated by the City of Greensboro. The granting of the variance assures the public safety and welfare and does substantial justice because there have been no public safety issues presented, seconded by Mr. Pinto. The Board voted 5-0 in favor of the motion. (Ayes: Anderson, Cross, Holston, Kee, Pinto. Nays: None.)

SPECIAL EXCEPTION

(A) BOA-05-28: 1101 WEST MARKET STREET MIKE BARBER REQUESTS A SPECIAL EXCEPTION AS AUTHORIZED BY SECTION 30-4-4.2(B) TO BE EXEMPT FROM PAVING REQUIREMENTS FOR A PARKING LOT THAT SUPPORTS A CHANGE IN USE FROM A SINGLE FAMILY DWELLING TO A LAW OFFICE. THE HISTORIC PRESERVATION COMMISSION HAS RECOMMENDED THIS SPECIAL EXCEPTION. PRESENT ZONING-GO-M, BS-8, CROSS STREET-TATE STREET. (GRANTED)

Mr. Ruska stated that Mike Barber is the owner of the property located at 1101 West Market Street. The property is zoned GO-M and is located at the southwest intersection of West Market Street and South Tate Street on zoning map block sheet 8 in the College Hill Historic District. The applicant is requesting a Special Exception to be exempt from paving requirements for a parking lot that supports a law office. The previous use of the property was a single family dwelling. In February 2005, the applicant submitted a change in use plan to the Planning Department to change the use from a single family dwelling to a law office. The plan has received all the required approvals with the exception that zoning gave a conditional approval pending the results of this Special Exception request. On May 25, 2005, the applicant was granted a Certificate of Appropriateness for exterior changes to the site which included gravel parking, along with other items. At their April 27, 2005 meeting, the Historic Preservation Commission recommended a Special Exception for the proposed parking lot to be constructed of gravel instead of concrete. The driveway and the handicap parking requirements have been paved. The adjacent property located to the west is zoned GO-M, The adjacent property to the east is zoned RS-5, and the property located on the eastern side of Tate Street is zoned PI.

Chair Holston asked if there was anyone present wishing to speak for or against this request.

Mike Barber, 1101 W. Market Street, was sworn in and stated that the proposed gravel for the property is consistent with the back alleyway that connects McIver Street and Tate Street. This surface was arrived at after some discussion with the City staff because they were able to save many trees that are very old and the City Arborist wanted a more permeable surface that would allow water to soak in and limit the run-off on the property. The drain system in place was developed for a gravel perimeter around it. Their ADA issues have been addressed by paving a front pad and the ramps are also consistent.

Mr. Cross moved that in BOA-05-28, 1101 W. Market Street, the Zoning Administrator's findings of fact be incorporated by reference along with the memo from the HCD, and the Zoning Enforcement Officer be overruled and the Special Exception granted in this matter, as the Special Exception would be in harmony with the general purpose and intent of the ordinance and preserve its spirit, assures public safety and welfare and does substantial justice based on the fact that the Historic Preservation Commission has already reviewed the case and has recommended that the Special Exception be granted because it does save some trees in the area and the driveway permits that type of preservation and it appears to be a sturdy and solid driveway and is consistent with the alleyway and the run-off needs and addressed other concerns in the ordinance such as handicap parking and walkway to the building, seconded by Ms. Anderson. The Board voted 5-0 in favor of the motion. (Ayes: Anderson, Cross, Holston, Kee, Pinto. Nays: None.)

Mr. Ruska reported that there will be a training session on July 28, 2005 with Rich Ducker from the Institute of Government. That will be 11:00 until 3:00 and a light lunch will be available.

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The meeting was adjourned at 5:39 p.m.

Respectfully submitted,

Hugh Holston, Chair
Greensboro Board of Adjustment

HH/jd